

SUPREME COURT OF KENTUCKY

MINUTES

JUNE 16, 2005

RELEASED: 2:00 P.M.

The following Supreme Court Opinions were voted on by the six sitting members of the Supreme Court on June 7, 2005, prior to Justice John C. Roach's appointment to the Court by Governor Ernie Fletcher.

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| 133. | DEMOND T. BROWN V.<br>COMMONWEALTH OF KENTUCKY<br>AND<br>DEMOND BROWN V.<br>COMMONWEALTH OF KENTUCKY<br><b>OPINION OF THE COURT BY<br/>JUSTICE COOPER – <u>AFFIRMING.</u></b><br>SCOTT, J., CONCURS IN PART<br>AND DISSENTS IN PART BY<br>SEPARATE OPINION. | <a href="#">2003-SC-000235-MR</a><br><b>TO BE PUBLISHED</b>     | CHRISTIAN           |
|      |                                                                                                                                                                                                                                                             | <a href="#">2003-SC-000716-TG</a><br><b>TO BE PUBLISHED</b>     | CHRISTIAN           |
| 134. | THOMAS C. BOWLING V.<br>LEXINGTON-FAYETTE URBAN<br>COUNTY GOVERNMENT, ET AL<br><b>OPINION OF THE COURT BY<br/>JUSTICE COOPER – <u>AFFIRMING.</u></b>                                                                                                        | <a href="#">2004-SC-000907-MR</a><br><b>TO BE PUBLISHED</b>     | FAYETTE             |
| 135. | MARK LEO THOMAS V.<br>COMMONWEALTH OF KENTUCKY<br><b>OPINION OF THE COURT BY<br/>JUSTICE COOPER – <u>REVERSING<br/>AND REMANDING.</u></b><br>WINTERSHEIMER, J., DISSENTS<br>BY SEPARATE OPINION.                                                            | <a href="#">2003-SC-000989-MR</a><br><b>TO BE PUBLISHED</b>     | JEFFERSON           |
| 136. | COMMONWEALTH OF KENTUCKY V.<br>LORRIE MITCHELL<br><b>OPINION OF THE COURT BY<br/>JUSTICE JOHNSTONE – <u>REVERSING.</u></b>                                                                                                                                  | <a href="#">2003-SC-000927-DG</a><br><b>TO BE PUBLISHED</b>     | FLOYD               |
| 137. | JACTA EST ALEA V.<br>COURT OF APPEALS<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>DENYING.</u></b>                                                                                                                                                       | <a href="#">2005-SC-000082-OA</a><br><b>NOT TO BE PUBLISHED</b> | IN SUPREME<br>COURT |

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| 138. | LATIMUS JUAN WINGATE V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b><br>COOPER, J., CONCURS IN<br>RESULT ONLY. | <a href="#">2003-SC-000206-TG</a><br><b>NOT TO BE PUBLISHED</b> | FAYETTE    |
| 139. | JAMES I. DAWSON, JR., V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                                          | <a href="#">2003-SC-000363-MR</a><br><b>NOT TO BE PUBLISHED</b> | MCCRACKEN  |
| 140. | JEFFREY ALLEN DEAN V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                                             | <a href="#">2003-SC-000374-MR</a><br><b>NOT TO BE PUBLISHED</b> | CASEY      |
| 141. | RAYMOND SCOTT V.<br>DIETTA SCOTT (NOW SUMMERS)<br><b>OPINION OF THE COURT –<br/><u>AFFIRMING.</u></b>                                                           | <a href="#">2003-SC-000443-DG</a><br><b>NOT TO BE PUBLISHED</b> | LIVINGSTON |
| 142. | TAMICA BEARD V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                                                   | <a href="#">2003-SC-000915-MR</a><br><b>NOT TO BE PUBLISHED</b> | OLDHAM     |
| 143. | TIMOTHY CHAMBERS V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                                               | <a href="#">2003-SC-001063-MR</a><br><b>NOT TO BE PUBLISHED</b> | GREENUP    |
| 144. | TED WILLIS V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                                                     | <a href="#">2004-SC-000032-MR</a><br><b>NOT TO BE PUBLISHED</b> | DAVISS     |

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| 145. | DARRYL A. DOWNING V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                                             | <a href="#">2004-SC-000059-MR</a><br><b>NOT TO BE PUBLISHED</b> | JEFFERSON                |
| 146. | DENNIS J. ISAACS V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                                              | <a href="#">2004-SC-000106-MR</a><br><b>NOT TO BE PUBLISHED</b> | JEFFERSON                |
| 147. | WILLIAM J. DAUGHERTY V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                                          | <a href="#">2004-SC-000198-MR</a><br><b>NOT TO BE PUBLISHED</b> | JEFFERSON                |
| 148. | WILLIAM R. PAYNE V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b><br>LAMBERT, C.J., CONCURS IN<br>RESLT ONLY.  | <a href="#">2004-SC-000269-MR</a><br><b>NOT TO BE PUBLISHED</b> | TAYLOR                   |
| 149. | GARY DEAN VAUGHN V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b><br>JOHNSTONE, J., CONCURS IN<br>RESULT ONLY. | <a href="#">2004-SC-000462-MR</a><br><b>NOT TO BE PUBLISHED</b> | LAUREL                   |
| 150. | RICKIE AKERS V.<br>PIKE COUNTY BOARD OF<br>EDUCATION, ET AL<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                                  | <a href="#">2004-SC-000631-WC</a><br><b>NOT TO BE PUBLISHED</b> | PIKE                     |
| 151. | CLARK REGIONAL MEDICAL<br>CENTER V.<br>RITA OSBORNE, ET AL<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                                   | <a href="#">2004-SC-000648-WC</a><br><b>NOT TO BE PUBLISHED</b> | FROM COURT<br>OF APPEALS |

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| 152. | JAMES E. EDWARDS V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                          | <a href="#">2004-SC-000649-MR</a><br><b>NOT TO BE PUBLISHED</b> | BARREN                   |
| 153. | MORGAN KIRK V.<br>RUTH CONTRACTORS, ET AL<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                                | <a href="#">2004-SC-000654-WC</a><br><b>NOT TO BE PUBLISHED</b> | FROM COURT<br>OF APPEALS |
| 154. | RONALD BOWLING V.<br>THE CHISHOLM COAL CO., ET AL<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                        | <a href="#">2004-SC-000665-MR</a><br><b>NOT TO BE PUBLISHED</b> | FROM COURT<br>OF APPEALS |
| 155. | LESTER E. COOK, JR. V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                       | <a href="#">2004-SC-000853-MR</a><br><b>NOT TO BE PUBLISHED</b> | WHITLEY                  |
| 156. | TASIA HOOTEN V.<br>WILLIAM T. JENNINGS, JUDGE<br>ET AL<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>                   | <a href="#">2004-SC-000871-MR</a><br><b>NOT TO BE PUBLISHED</b> | FROM COURT<br>OF APPEALS |
| 157. | MICHAEL A. THORNTON V.<br>VOLT SERVICES GROUP<br>ET AL<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>REVERSING AND<br/>REMANDING.</u></b> | <a href="#">2004-SC-000442-WC</a><br><b>NOT TO BE PUBLISHED</b> | FROM COURT<br>OF APPEALS |

**SUPREME COURT OF KENTUCKY**

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**OPINIONS AND ORDERS ENTERED JUNE 16, 2005**

MITCHELL ANDREW WILLIAMS V. TERESA ANN MILLS WILLIAMS (NOW JEWELL) <b>OPINION AND ORDER DISMISSING AS MOOT.</b>	2003-SC-000054-DG <b>NOT TO BE PUBLISHED</b>	BELL
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KENTUCKY BAR ASSOCIATION V. BARRY SLOAN SMITH <b>OPINION AND ORDER PERMANENTLY DISBARRING RESPONDENT FROM THE PRACTICE OF LAW IN THE COMMONWELATH OF KENTUCKY.</b>	<a href="#"><u>2005-SC-000204-KB</u></a> <b>TO BE PUBLISHED</b>	IN SUPREME COURT
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KENTUCKY BAR ASSOCIATION V. TAMMIE JONES SIVALLS <b>OPINION AND ORDER PERMANENTLY DISBARRING RESPONDENT FROM THE PRACTICE OF LAW IN THE COMMONWEALTH OF KENTUCKY.</b>	<a href="#"><u>2005-SC-000216-KB</u></a> <b>TO BE PUBLISHED</b>	IN SUPREME COURT
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ENVIROPOWER, LLC V. PUBLIC SERVICE COMMISSION OF KENTUCKY, ET AL <b>OPINION AND ORDER DENYING INTERLOCUTORY RELIEF PURSUANT TO CR 65.09(3). ENTERED: JUNE 7, 2005</b>	2005-SC-000437-I	FRANKLIN
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**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW  
ENTERED JUNE 8, 2005**

FREDERICK CARL KRAUSE III V. COMMONWEALTH OF KENTUCKY	2004-SC-001009-DG	MCCRACKEN
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LOUISVILLE GAS AND ELECTRIC COMPANY V. JONATHAN MARK ROBERSON, ETC.	2005-SC-000188-DG	JEFFERSON
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**SUPREME COURT OF KENTUCKY**

**MINUTES**

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW**  
**ENTERED JUNE 8, 2005**

JOHN ELLIS, ET AL V. CARITAS HEALTH SERVICES	2004-SC-000610-D	JEFFERSON
J.J.B. HILLIARD, W.L. LYONS, INC., ET AL V. ROBERT C. OLIVER	2004-SC-000675-D	JEFFERSON
TOMMY WELLS, ETC., ET AL V. LAWRENCE LEVINE, M.D.	2004-SC-000689-D	KENTON
JOHNNY CURTSINGER, ET AL V. JIM HURST, ETC., ET AL AND JIM HURST, ETC. V. JOHNNY CURTSINGER, ET AL	2004-SC-000699-D  2004-SC-000749-D	WASHINGTON  WASHINGTON
<b>COURT OF APPEALS OPINION IS ORDERED NOT TO BE PUBLISHED</b>		
SHARON TIMMONS V. CITY OF LOUISVILLE, ETC., ET AL	2004-SC-000776-D	JEFFERSON
HUNTINGTON NATIONAL BANK, ET AL V. HENRY PORTER, ET AL	2004-SC-000801-D	JEFFERSON
DONALD C. WIGGINS, ET AL V. THE KROGER COMPANY, ET AL	2004-SC-000802-D	CLARK
JOHN SMITH V. COMMONWEALTH OF KENTUCKY	2004-SC-000837-D	GARRARD
WILL L. MCGINNIS III V. ROMAN CATHOLIC DIOCESE OF COVINGTON, ET AL	2004-SC-000840-D	FAYETTE
LEONARD W. FORD V. E*TRADE SECURITIES, INC.	2004-SC-000857-D	OLDHAM

**SUPREME COURT OF KENTUCKY**

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW**  
**ENTERED JUNE 8, 2005**

ELMER SCOTT DAVIS V. COMMONWEALTH OF KENTUCKY TRANSPORTATION CABINET, ET AL	2004-SC-000897-D	MEADE
DAVID B. LEE V. JUDY KAYE LEE	2004-SC-000899-D	FAYETTE
COMMONWEALTH OF KENTUCKY LINZIE DOUGLAS RICE	2004-SC-000906-D	LESLIE
JA-RON SHAWN TEAGUE V. COMMONWEALTH OF KENTUCKY	2004-SC-000915-D	JEFFERSON
JAMES E. SMITH, ET AL V. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ET AL	2004-SC-000920-D	WHITLEY
BECKY JEAN SNIDER, NOW VAUGHN V. STANLEY WAYNE SNIDER	2004-SC-000921-D	HENRY
EDWARD W. MOORE, JR. V. ROBERT E. GROVERT, ET AL	2004-SC-000923-D	SCOTT
SHARON LAY, ETC., ET AL V. CHRISTOPHER S. ADLEY, M.D., ET AL	2004-SC-000934-D	KENTON
AARON C. TAYLOR V. COMMONWEALTH OF KENTUCKY	2004-SC-000960-D	GRANT
ROBERT SCHROERING, D.M.D. V. ERIC SCOTT REED	2004-SC-000963-D	SHELBY
MAHMOOD HOSSEINIPOUR, M.D., ET AL V. APPALACHIAN REGIONAL HEALTH CARE, INC., ET AL	2004-SC-000982-D	FAYETTE

**SUPREME COURT OF KENTUCKY**

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ANDRE LAW V. COMMONWEALTH OF KENTUCKY	2004-SC-000994-D	CUMBERLAND
DAVID ALLEN PARTIN V. COMMONWEALTH OF KENTUCKY	2004-SC-001072-D	BELL
CARL D. QUILLEN V. COMMONWEALTH OF KENTUCKY	2004-SC-001084-D	JESSAMINE
JERRY HALL V. CLARENCE B. CREECH, ET AL	2004-SC-001089-D	BOYD
RICK PAUL V. KAREN ANN KIMMEL, ET AL	2004-SC-001124-D	FRANKLIN
AMERICAN RESOURCES INS. CO., V. JACK ABSHER, ET AL	2004-SC-001128-D	MAGOFFIN
RAYMOND E. KING, ETC. V. SHARON MERCIER, ET AL	2005-SC-000024-D	NELSON
JOHN LAWSON REALTY CO., INC., ET AL V. DON ERLER, ET AL	2005-SC-000052-D	JEFFERSON
JOHNNY BROWN, ET AL V. HEALTH CARE COLLECTION SERVICE, INC., ET AL	2005-SC-000075-D	FAYETTE
RICHARD ELAM, ET AL V. RANDY BICKNELL	2005-SC-000083-D	WOODFORD
DEREK MANN V. COMMONWEALTH OF KENTUCKY	2005-SC-000113-D	RUSSELL



**SUPREME COURT OF KENTUCKY**

**MINUTES**

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW**  
**ENTERED JUNE 8, 2005**

JEFFREY DEWAYNE CLARK V. COMMONWEALTH OF KENTUCKY <b>OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2005-SC-000136-D	MEADE
DON GIBSON, ET AL V. BONNIE SHOULTA, ET AL	2005-SC-000154-D	MCCRACKEN
JAMES LANG, V. JOHN REES COMMISSIONER	2005-SC-000156-D	FAYETTE
CAROL ADAMS V. CITY OF SPRINGFIELD, KENTUCKY ET AL	2005-SC-000176-D	WASHINGTON
GERALD CONLEY WILLIAMS, JR. V. COMMONWEALTH OF KENTUCKY	2005-SC-000200-D	MCCRACKEN
COMMONWEALTH OF KENTUCKY V. JOHN C. BROOKS	2005-SC-000203-D	ESTILL
DERRICK KRYSTYNAK V. COMMONWEALTH OF KENTUCKY	2005-SC-000209-D	JEFFERSON
THOROUGHbred LEARNING CENTER, INC., ET AL V. STEPPING STONES FOR CHILDREN INC.	2005-SC-000219-D	CLARK
ROBERT F. NIENHOUSE V. DONNA KAY NIENHOUSE	2005-SC-000221-D	SPENCER
BOARD OF EDUCATION OF BOONE COUNTY, KENTUCKY, ET AL V. CHARLES COURTNEY, ET AL	2005-SC-000226-D	BOONE

**SUPREME COURT OF KENTUCKY**

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW  
ENTERED JUNE 8, 2005**

JAMES LANG V. COMMONWEALTH OF KENTUCKY	2005-SC-000235-D	CAMPBELL
JERRY WAYNE WELCH V. COMMONWEALTH OF KENTUCKY	2005-SC-000265-D	DAVISS
MARION S. KINCAID V. COMMONWEALTH OF KENTUCKY	2005-SC-000280-D	ANDERSON
PAUL HAWKS V. COMMONWEALTH OF KENTUCKY	2005-SC-000291-D	KENTON
JIMMY MATTHEWS V. COMMONWEALTH OF KENTUCKY	2005-SC-000324-D	JEFFERSON
CRAIG LOUIS DEAN MILNER V. COMMONWEALTH OF KENTUCKY	2005-SC-000377-D	FAYETTE

**COURT ORDERS DENYING MOTION TO TRANSFER ENTERED JUNE 16, 2005**

TASIA HOOTEN V. HON. WILLIAM T. JENNINGS JUDGE, CLARK CIRCUIT COURT ET AL	2005-SC-000142-T	CLARK
KEITH DEVON EVERETT ALLEN, ETC. V. COMMONWEALTH OF KENTUCKY	2005-SC-000258-T	HARDIN

**COURT ORDERS DENYING PETITIONS FOR REHEARING ENTERED JUNE 16, 2005**

KENTUCKY RETIREMENT SYSTEMS V. JOYCE ANN LEWIS <b>ORDER DENYING PETITION FOR REHEARING AND GRANTING MODIFICATION OF OPINION.</b>	2002-SC-000516-DG 2003-SC-000730-DG	FRANKLIN
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**SUPREME COURT OF KENTUCKY**

**MINUTES**

**JUNE 16, 2005**

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**COURT ORDERS DENYING PETITIONS FOR REHEARING ENTERED JUNE 16, 2005**

A.W., A CHILD UNDER EIGHTEEN V. COMMONWEALTH OF KENTUCKY <b>ORDER DENYING PETITION FOR REHEARING AND MODIFYING OPINION BY SUBSTITUTION OF PAGES TO CORRECT A TYPOGRAPHICAL ERROR.</b>	2003-SC-000424-DG	CAMPBELL
RICHIE PHARMACAL V. KATHY DUNN, ET AL	2004-SC-000288-WC	FROM COURT OF APPEALS
THOMAS C. BOWLING V. COMMONWEALTH OF KENTUCKY <b>ENTERED: JUNE 7, 2005</b>	2004-SC-000880-MR	FAYETTE

**COURT ORDERS**

R. DAVID STENGEL, ETC., ET AL V. KENTUCKY BAR ASSOCIATION AND	2004-SC-000305-KB	IN SUPREME COURT
RICHARD BOLING, ETC., ET AL V. KENTUCKY BAR ASSOCIATION AND	2004-SC-000332-KB	IN SUPREME COURT
KENTUCKY MEDICAL ASSOCIATION V. KENTUCKY BAR ASSOCIATION AND	2004-SC-000336-KB	IN SUPREME COURT
RAYMOND M. LARSON, ETC. V. KENTUCKY BAR ASSOCIATION AND	2004-SC-000347-KB	IN SUPREME COURT
IRV MAZE, ETC. V. KENTUCKY BAR ASSOCIATION AND	2004-SC-000357-KB	IN SUPREME COURT
GEORGE W. MOORE, ETC. V. KENTUCKY BAR ASSOCIATION AND	2004-SC-000349-KB	IN SUPREME COURT
KENTON R. SMITH, ETC. V. KENTUCKY BAR ASSOCIATION AND	2004-SC-000350-KB	IN SUPREME COURT

**SUPREME COURT OF KENTUCKY**

**MINUTES**

**JUNE 16, 2005**

**RELEASED: 2:00 P.M.**

**COURT ORDERS**

ROY K. SNELL, ETC. V.  
KENTUCKY BAR ASSOCIATION  
AND

[2004-SC-000346-KB](#)

IN SUPREME  
COURT

BARRY BERTRAM, ETC. V.  
KENTUCKY BAR ASSOCIATION  
**COURT ORDER AMENDING THE  
OPINION ENTERED MAY 19, 2005 BY  
THE SUBSTITUTION OF A NEW OPINION  
TO CLARIFY THE IDENTIFICATION OF  
PARTIES COUNSEL.**

[2004-SC-000339-KB](#)

IN SUPREME  
COURT

ENTERED: JUNE 1, 2005  
ENTERED: JUNE 9, 2005

COMMONWEALTH OF KENTUCKY V.  
JIMMY DEAN SCOTT  
**ORDER DENYING CERTIFICATION  
OF THE LAW.**

2005-SC-000238-CL

LETCHER

ENTERED: JUNE 16, 2005

**COURT ORDERS PERMITTING MOVANT TO WITHDRAW AS A MEMBER OF  
THE KENTUCKY BAR ASSOCIATION**

JOHN BLACKBURN SOUTHARD JR. V.  
KENTUCKY BAR ASSOCIATION  
**ENTERED: MAY 23, 2005**

2005-SC-000380-KB

IN SUPREME  
COURT